United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Nancy Gleason

Bankruptcy No. 01 B 14730

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Judge: Ginsberg

Appearance of Counsel:

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
Nancy Gleason,	)	No. 01 B 14730
	)	
Debtor.	)	Honorable Robert E. Ginsberg

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Nancy Gleason's (the "Debtor") motion for a stay pending appeal of the Order granting Dowd & Dowd's motion to dismiss the Debtor's Chapter 11 case under 11 U.S.C. § 1112(b). For the reasons stated in this memorandum opinion and order, the Debtor's motion is denied.

This Court has jurisdiction over this proceeding under 28 U.S.C. §1334(b) as a matter arising under Fed. R. Bankr. P. 8005. The matter is before this Court under Internal Operating Procedure 15(a) (formerly known as Local Rule 2.33) of the United States District Court for the Northern District of Illinois, automatically referring bankruptcy cases and proceedings to this court for hearing and determination. This is a core proceeding under 28 U.S.C. §157(b)(2)(A).

The Debtor asks this Court to grant her a stay pending appeal of this Court's Order of December 13, 2001. She has previously asked this Court to reconsider and vacate that same Order, which dismissed the Debtor's Chapter11 case as having been filed in bad faith. In her motion under Fed.R.Bankr.P. 9023, the Debtor argued, among other things, that the Court did not follow cases which, according to the Debtor, hold that it is not bad faith to file for bankruptcy

relief when a debtor has insufficient funds to pay for a supersedeas bond. This Court denied her motion to reconsider in an Order entered on December 20, 2001.

In the instant motion, the Debtor argues that she has a substantial possibility of success pending an appeal, that she will be irreparably injured absent a stay, that the issuance of a stay will not substantially injure the other parties interested in the instant proceeding, and that the granting of a stay will not be adverse to the public interest. See, e.g., Evans V. Buchanan, 435 F. Supp. 832 (D. Del. 1977).

Federal Rule of Bankruptcy Procedure 8005, which provides for a stay pending appeal, states in relevant part:

> A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court.

Fed.R.Bankr.P. 8005.

Whether to grant a stay pending appeal is within this Court's discretion and depends upon four factors: (1) the movant's likelihood of success on the merits of appeal; (2) whether the movant will suffer irreparable injury if a stay pending appeal is not granted; (3) whether other

parties will suffer substantial harm if the stay is issued; and (4) whether there will be harm to the public interest if the stay is granted. Dornik v. Maurice (In re Maurice), 167 B.R. 136, 138 (Bankr. N.D. Ill. 1994). The Court's decision, while taking into account these four factors, should be based upon the totality of the circumstances presented in the case. Evans v. Buchanan, 435 F. Supp. 832, 842 (D. Del. 1977). The moving party bears the burden of showing that the circumstances warrant a stay of judgment. See S.N.A. Nut Co. v. Nat'l Union Fire Insurance Co. (In re S.N.A. Nut. Co.), 1996 WL 31155 at *2 (Bankr. N.D. Ill. 1996).

This Court finds that the Debtor has not shown that the required elements are present in this case. She has not shown that she is likely to succeed on the merits of the appeal. The Debtor states that she is likely to succeed on appeal simply because this Court did not follow a line of cases that may have been favorable to her position. However, she does not and cannot point out an error of law made by this Court; she simply seems to be arguing that she does not like the cases cited by this Court, and she would have preferred the reliance on other cases by the Court. This does not show that it is reasonably likely that she would be successful on appeal. See Evans, 435 F. Supp. at 843-47 (analyzing merits of case on appeal).

The Debtor has also not shown that she will suffer irreparable harm absent a stay of the dismissal order. Her arguments in support of her assertion that she will suffer irreparable harm are without merit. The Debtor argues that, absent a stay, Dowd & Dowd will be "taking all for itself moneys that should be distributed to creditors equally in a bankruptcy context." (Debtor's Motion for Stay at p. 5). She also argues that she will be subject to continual harassment by Dowd & Dowd as it attempts to collect on its judgment from her, and finally that Dowd &

Dowd's garnishment of her wages and sale of non-exempt assets will cause needless disruption in her life.

This Court finds no merit in these assertions and in the Debtor's attempts to portray Dowd & Dowd as the villain in the bankruptcy proceedings. While the Court is very impressed with the Debtor's concern for her other creditors (which creditors, based on the Debtor's testimony, may or may not be actively pursuing their claims against her), an injury to her creditors in no way per se amounts to irreparable harm to the Debtor. Further, this Court is not persuaded that Dowd & Dowd, in its attempts to collect on a judgment entered in its favor in state court, is in any way harassing the Debtor. It does not amount to irreparable harm for a judgment debtor to be subjected to post-judgment enforcement actions to collect a judgment in favor of a judgment creditor where the debtor has not posted a supersedeas bond. Maurice, 167 B.R. at 138. Additionally, monetary harm is generally not irreparable. Classic Components v. Mitsubishi Electronics Am., 841 F.2d. 163, 164-65 (7th Cir. 1988), S.N.A. Nut Co. v. Nat'l Union Fire Insurance Co. (In re S.N.A. Nut Co.), 1996 WL 31155 at *3 (N.D. Ill. 1996).

Next, the Debtor has failed to show that Dowd & Dowd will not be substantially harmed if the dismissal order is stayed. According to the Debtor, the only effect on Dowd & Dowd of a stay would be that Dowd & Dowd would be prevented from garnishing 15% of her wages and obtaining the value of her non-exempt assets. Although she does not phrase it this way, the Debtor is basically saying that should the Court grant the relief the Debtor seeks, Dowd & Dowd would be prevented from collecting on its judgment. Preventing Dowd & Dowd from collecting the judgment due it would amount to substantial harm. Dowd & Dowd obtained a state court judgment against the Debtor in the amount of $2.6 million, and the Debtor did not post a

supersedeas bond covering her pursuit of the appeal in state court. Without a bond from the Debtor, Dowd & Dowd's interests would not be protected, and substantial harm would result if it were prevented from pursuing collection. See, e.g., Dornik, 167 B.R. at 138.

It is worth noting that, in her motion, the Debtor stated that this Court could require that she post a bond in the amount of the value of her non-exempt assets and 15% of her wages. (Debtor's Motion for Stay at p. 5). This is too little, too late. The Debtor had the chance to post a bond in the state court proceeding, but she chose to file a bankruptcy petition instead.

Finally, the Debtor has not shown that the public interest will not be harmed if the dismissal order is stayed. She argues that certainly no public interest is adversely affected by the granting of the stay.

This Court disagrees. While in this case the public interest is not as important as the other three factors, the public interest would best be served by denying the Debtor's motion. This Court found in its December 13, 2001 memorandum opinion and order that the Debtor's bankruptcy petition was filed in bad faith. This Court cannot imagine that the public interest would be served by allowing a Debtor to delay a judgement creditor's attempt to pursue collection, after the debtor filed a bankruptcy petition in bad faith. If anything, the public interest is served when parties are stopped from abusing the bankruptcy courts to unilaterally gain a litigation advantage in a state court proceeding.

Conclusion

For the reasons set forth in the memorandum opinion and order, the motion of the Debtor for stay pending appeal of order granting Dowd & Dowd's motion to dismiss the Debtor's Chapter 11 case under 11 U.S.C. § 1112(b) is denied.

ENTERED:

Dated: January 3, 2002

Robert E. Ginsberg
United States Bankruptcy Judge